

**DELTA VISION BLUE RIBBON TASK FORCE
MEETING OF JUNE 26 AND 27, 2008**

Legal Update by Chris Stevens, Chief Counsel, CALFED Program
(As of June 24, 2008)

I. Selected Delta-Related Litigation of Statewide Significance

A. OCAP Biological Opinion Cases:

1. Smelt Case (NRDC v. Kempthorne)

- Wanger ordered new BO by September 15, 2008.
- USFWS 30-day “sufficiency review” of new BA ends June 28, 2008.
- Normal 135-day consult/preparation period would extend beyond court deadline.
- Hearing August 29, 2008, on challenge to renewal contracts that relied on old BO.

2. Salmon/Steelhead Case (PCFFA v. Gutierrez)

- Multi-day interim remedies hearing began June 10, 2008, scheduled to conclude June 27, 2008.
- New BO anticipated March 2009.

B. CALFED Cases:

- CA Supreme Court unanimous decision June 5, 2008: Programmatic EIR/S complied with CEQA.
- Parties intend to jointly file request to dismiss pending federal NEPA challenge.

II. Examples of Delta-Related, Inter-Regional Disputes (Current and Past)

A. Allegations of Illegal In-Delta Water Diversions: San Joaquin River Group v. Unidentified Central/South Delta Diversers

- May 12, 2008, letter from SJRG to State Water Board, urging action to prevent allegedly illegal diversions.
- State Board draft Delta Workplan: Commencing October 2008, State Board to investigate whether illegal diversions are occurring and take action to address those illegal diversions; initially focusing on Delta, however other areas of Bay-Delta watershed also subject to investigation and potential enforcement action.

B. Sacramento's Effluent Problem (ammonia and other nutrient-laced wastewater): Contra Costa WD, Metropolitan WD, State Water Contractors, Santa Clara Valley Water District v. Sacramento Regional County Sanitation District

- November 28, 2007, Sacramento Superior Court invalidated EIR for expansion of Sacramento area wastewater treatment Plant (would allow total discharge volume to grow 30%), finding EIR failed to fully assess the additional nutrients that would be pumped into the Delta in the region's wastewater.
- March 2008 case appealed to 3rd District Court of Appeal.

C. More Delta Wastewater Issues: State Senator Dean Florez (representing Kern, Kings, Fresno, and Tulare Counties) v. 17 Municipal Wastewater Dischargers

- April 30, 2008, Senator Florez issued Public Records Act Requests to large water users who, according to his press release "discharge pharmaceutical-laden 'grey water' into the Sacramento-San Joaquin Bay-Delta, seeking to account for the contamination that is destroying habitat for critical species, such as the Delta smelt."

D. Sacramento Valley Groundwater Dispute: Butte Environmental Council v. Glenn Colusa Irrigation District

- CEQA challenge in Glenn County Superior Court to GCID plans to drill 7 groundwater extraction wells in the Lower Tuscan aquifer (which underlies Butte, Glenn, Tehama, and Colusa counties) without preparing EIR.
- GCID claims the wells are a "research effort" exempt from full-blown EIR; BEC views the proposal as part of a larger plan to incorporate Tuscan aquifer water into the SWP/CVP water supplies.
- Hearing on the merits August 6, 2008.

E. Contra Costa Water District Alternative Intake Project: San Luis & Delta Mendota Water Authority v. CCWD

- May 30, 2008, Record of Decision signed for the Contra Costa Alternative Intake Project EIR/S. According to Reclamation Press Release, "The Preferred Alternative will improve water supply reliability, improve protection of sensitive Sacramento-San Joaquin Bay-Delta fisheries impacted by operation of CCWD's Delta intakes by screening the intake, and improve emergency water supply reliability. The infrastructure of the Preferred Alternative includes a new point of

diversion and pumping facilities on Victoria Canal in the Delta. CCWD's system-wide maximum diversion rate and average annual water diversion quantity will not increase.”

- However, in a case that settled shortly after it was filed in December 2006, San Luis alleged that EIR failed to consider all project impacts to water quality and water supply for south of Delta users. CCWD countered in press release that the case “is an opening salvo in the impending battle over renewed efforts to build a Peripheral Canal around the Delta as well as other actions to increase Delta water exports south.”

F. Freeport Regional Water Project: Coalition of 100 Water Agencies throughout State that Rely on Delta Supplies v. EBMUD/Sacramento County Water Authority

- May 2007 Government officials and environmentalists “broke ground” on the Freeport Project, ending a 35-year inter-regional legal and political battle. When completed in 2010, it will provide 85 million gallons of water a day to Sacramento County Water Agency; additionally, during drought years, 100 million gallons a day to EBMUD.
- Originally, EBMUD planned to take supplemental water from the American River, which was opposed by environmental groups and the City of Sacramento. In 2001, EBMUD and Sacramento reached agreement to work together to meet regional needs and move the joint project to the Sacramento River, below its confluence with the American and south of Sacramento. All 100 agency plaintiffs eventually settled with the project partners, the last being CCWD in early 2004.

G. New Southern California Drought Plan: Central Basin Municipal Water District v. Metropolitan Water District

- April 16, 2008, Met was sued in L.A. County Superior Court by Commerce-based Central Basin WD - one of its own member agencies - challenging the constitutionality and environmental aspects of a drought plan approved by Met in February.
- Central Basin WD, which serves Whittier and other communities in the Southeast area of L.A. County, contends that the Plan’s allocation formula would unfairly penalize Central Basin’s more urbanized, lower-income, largely Latino communities while benefiting wealthier, growing inland areas.